

	1	2 thru 6	7 & 8	9 & 10	11 thru 15
Position Entry	N	00168	87	MD or RV	00001

Position	Data entry
1 .....	"N" identifies Navy.
2 thru 6 .....	Unit Identification Code of document issuing activity.
7 and 8 .....	Last two digits of the fiscal year in which the claim is approved for payment.
9 and 10, .....	For NAVCOMPT 2277s, "MD" identifies the document as Miscellaneous Financial Document.
or,	
9 and 10 .....	For SF 1164s, "RV" identifies the document as a Reimbursement Voucher.
11 thru 15 .....	Consecutively assigned five digit serial number beginning with "00001" each fiscal year. Each subsequent claim will then be serially numbered "00002", "00003", etc.

## PART 733—ASSISTANCE TO AND SUPPORT OF DEPENDENTS; PATERNITY COMPLAINTS

Sec.

733.1 Rates of basic allowance for quarters.

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733.5 Determination of paternity and support of illegitimate children.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 37 U.S.C. 101, 401, 403; 50 U.S.C. App. 2210; E.O. 11157, 29 FR 7973, 3 CFR 1964 Supp. p. 139, as amended.

SOURCE: 44 FR 42190, July 19, 1979, unless otherwise noted.

### § 733.1 Rates of basic allowance for quarters.

(a) Except as otherwise provided by law, a member of the naval service entitled to basic pay is entitled to a basic allowance for quarters at the monthly rates according to the pay grade to which he or she is assigned, in accordance with 37 U.S.C. 403.

(b) The term "dependent" with respect to a member of the naval service, as used in this part, means:

(1) His or her spouse;

(2) His or her unmarried child (including any of the following categories of children if such child is in fact dependent on the member: A stepchild; an adopted child; or an illegitimate child whose alleged member-parent has been judicially decreed to be the parent

of the child or judicially ordered to contribute to the child's support, or whose parentage has been admitted in writing by the member) who either:

(i) Is under 21 years of age; or

(ii) Is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his or her support; and

(3) His or her parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before he or she became 21 years of age) who is in fact dependent on the member for over one-half of his or her support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary of the Navy, and he or she is not considered a dependent of the member claiming the dependency unless:

(i) The member has provided over one-half of his or her support for the period prescribed by the Secretary; or

(ii) Due to changed circumstances arising after the member enters on active duty, the parent becomes in fact dependent on the member for over one-half of his or her support.

The relationship between a stepparent and his or her stepchild is terminated by the stepparent's divorce from the parent by blood.

**§ 733.2 Delegations.**

The Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199, with respect to personnel of the Navy, and the Head, Personal Affairs Branch, Manpower Department, Headquarters United States Marine Corps, Washington, DC 20380, with respect to personnel of the Marine Corps, have been granted the authority by the Secretary of the Navy to make determinations including determinations of dependency and relationship when required by legislation or policy for eligibility for basic allowance for quarters, transportation and medical care in behalf of dependents of Navy and Marine personnel and to administer matters involving adequacy of support for dependents and waivers of support of a spouse, and on the basis of new evidence or for other good cause to reconsider or modify any such determination.

**§ 733.3 Information and policy on support of dependents.**

(a) *Policy*—(1) *General*. The naval service will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the naval service are expected to conduct their personal affairs satisfactorily. This includes the requirement that they provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so which tends to bring discredit on the naval service is a proper subject of command consideration for initiation of court-martial proceedings or other administrative or disciplinary action.

(2) *Adequacy of support*. Every member has an inherent natural and moral obligation to support his or her spouse and family. What is adequate and reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. Salient factors that should be considered are the pay of the member, any other private income or resources of the member and the dependents, the cost of necessities and every day living expenses and financial obligations of the dependents, and the expenses and

other financial obligations of the member in relation to his or her income. The Department of the Navy does not and cannot act as a court in these matters. It is desired that the amount of support to be provided for dependents either be established by mutual understanding between the parties concerned or adjudicated in the civil courts. The support scales set forth below are not intended as a fixed rule. They are intended as guidelines and the actual support may be increased or decreased as the facts and circumstances warrant until the amount of support to be furnished is settled by agreement of the parties or adjudicated by the civil courts. Because of the inherent arbitrary and temporary nature of the support scales set forth below, it is not intended that they be used as bases for any judicial proceedings, for to do so would lend excessive credence to administrative tools which have been designed for use only within the Navy and the Marine Corps.

(i) Number of dependents and amount of support to be provided in the absence of a mutual agreement or court order:

(A) Navy members:

Relationship and number of dependents	Support to be provided (gross pay)
Spouse only .....	1/3
Spouse and one minor child .....	1/2
Spouse and two or more children .....	3/5
One minor child .....	1/6
Two minor children .....	1/4
Three minor children .....	1/3

For purposes of this support guide, gross pay will include basic pay and basic allowance for quarters, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(B) *Marine Corps members*. If the question of support is in dispute, the following will be used as a guide for support:

For spouse only—BAQ plus 20% of basic pay.  
 For spouse and one minor child—BAQ plus 25% of basic pay.  
 For spouse and two or more minor children—BAQ plus 30% of basic pay.  
 For one child—1/6 of basic pay.  
 For two minor children—1/4 of basic pay.  
 For three or more minor children—1/3 of basic pay.

(1) The amount of support to a dependent for whom basic allowance for quarters is claimed should not be less than the applicable rate of basic allowance for quarters to which the member is entitled.

(2) A Marine's obligation to provide for the support of children by a former marriage has as high a priority as an obligation to provide for a present wife and family. In those cases of a legitimate financial inability to provide support for all dependents, commanders shall attempt to assist the Marine in the equitable distribution of income for the assistance of all dependents, utilizing the guidelines set forth above.

(3) It is to be emphasized that the guidelines set forth are to be used only as an interim measure, and that the commander's decision as to the quantum of support to be provided will be, *prima facie*, the appropriate conclusion of the Marine Corps, pending civil court or extrajudicial resolution among the involved parties.

(3) *Support of a lawful wife.* The laws of jurisdictions in the United States impose a legal obligation upon a husband to support his wife. Exemptions from support of a lawful wife may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the wife or mutual agreement of the parties, or a waiver of the naval support requirement granted by the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps, as appropriate.

(4) *Payments of alimony.* Dependents for whom basic allowance for quarters or other allowances are payable are defined by law. For purposes of qualifying for basic allowance for quarters, medical care or other benefits, a former spouse is not a dependent even though alimony has been decreed. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though basic allowance for quarters is not payable.

(5) *Support of children.* The duty of a member to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the marriage through di-

vorce, unless the judicial decree or order specifically negates the obligations of the member to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the service member of the inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a child or children, or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child under the following conditions:

(i) Where the member cannot ascertain the whereabouts and welfare of the child concerned.

(ii) Where it is apparent that the person requesting support for a child does not have physical custody of the child.

(iii) Where the member has been granted custody of the child by court order but does not have physical control of the child and the member is ready, willing, and able to care for and support the child if physical control is obtained.

(6) *Adopted children.* The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parents. A Navy or Marine Corps member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for such child during minority.

(7) *Entitlement to basic allowance for quarters.* Entitlement of members to basic allowance for quarters on behalf of dependents is provided by statute. No member should be denied the right to submit a claim or application for basic allowance for quarters, nor should any command refuse or fail to forward any such claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the

application and serves no useful purpose, as such cases are thoroughly investigated by the Navy Family Allowance Activity or Headquarters Marine Corps, which obtains necessary dependency affidavits directly from the parents. Any person, including a service member or dependent who obtains an allowance by fraudulent means is subject to criminal prosecution.

(8) *Application of the rule based on Robey v. United States 71 Ct. Cl. 561.* Determinations that no dependency exists may be made in disputed cases—if a member does not contribute to the support of spouse and child at least to the extent of:

- (i) The full amount of his/her basic allowance for quarters, or
- (ii) An amount specified in a court order or legal separation agreement, or
- (iii) An amount agreed to by the parties as acceptable, adequate support, whichever is lesser. Pertinent decisions of the Court of Claims or Comptroller General will be followed in determinations of dependency.

#### **§733.4 Complaints of nonsupport and insufficient support of dependents.**

(a) Upon receipt of a complaint alleging that a member is not adequately supporting his or her lawful dependents (spouse or children), the member will be interviewed and informed of the policy of the Department of the Navy concerning support of dependents. In the absence of a determination by a civil court or a mutual agreement of the parties, the applicable guide in §733.3 will apply. The member will be informed that his/her Navy or Marine Corps career may be in jeopardy if he/she does not take satisfactory action. The member may become ineligible to reenlist or extend enlistment (in the case of enlisted members), and may be subject to administrative or disciplinary action that may result in separation from the Navy or Marine Corps.

(1) *Waiver of support of spouse.* If the member feels that he or she has legitimate grounds for a waiver of support for the spouse, the Director, Navy Family Allowance Activity, acting under the policy guidance of the Chief of Naval Personnel or the Commandant of the Marine Corps (Code MSPA), may grant such a waiver for support of a

spouse (but not children) on the basis of evidence of desertion without cause or infidelity on the part of the spouse. The evidence may consist of—

(i) An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer. However, affidavits of the service member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(ii) Written admissions by the spouse contained in letters written by that spouse to the service member or other persons.

The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps (Code MSPA) with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

(2) *Action.* After a written complaint that a member has failed or refused to furnish support for his or her spouse or children has been received, and the member has been counseled with regard to his/her rights and obligations in the support matter, continued failure or refusal, without justification, to furnish support for dependents in accordance with the provisions of a valid court order, written agreement, or, in the absence of a court order or agreement, the appropriate support guide set forth above, will be a basis for consideration of disciplinary or administrative action which may result in the member's separation from active service.

#### **§733.5 Determination of paternity and support of illegitimate children.**

(a) *Illegitimate children.* If the service member desires marriage, leave for this purpose is recommended whenever consistent with the needs or exigencies of the service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate.

(b) *Judicial order or decree of paternity or support.* Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree falls within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy or Marine Corps on active duty, the member concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The member will be advised that he is expected to render financial assistance to the child regardless of any doubts of paternity that the member may have. If the court order or decree specifies an amount of support to be provided the member will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable guide set forth above. However, no basic allowance for quarters will be included in using the guide unless basic allowance for quarters is payable in behalf of illegitimate children. If the member refuses to comply with the terms of the court order, administrative action will be taken as indicated in § 733.4.

(1) *Court of competent jurisdiction.* A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, although not always, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the

court may have acquired jurisdiction over the member by any mode of service or notice recognized as sufficient by the laws of that country. It should be noted, however, that an order or decree against a citizen or permanent resident of another country, without personal service or personal notice of the action to him or her, is null and void unless the member voluntarily submitted to the jurisdiction by appearing and contesting the action. In the event there is doubt as to the competency of the court to enter the order or decree, the question shall be referred to the Judge Advocate General.

(2) [Reserved]

(c) *Nonjudicial determination.* In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the member shall be privately consulted and asked, where appropriate, whether he or she admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he or she is expected to furnish support as set forth in paragraph (b) of this section. Where paternity or the legal obligation to support is admitted by a male member, such member should be informed of his moral obligation to assist in the payment of prenatal expenses.

(d) *Members not on active duty.* Allegations of paternity against members of the naval service who are not on active duty will be forwarded to the individual concerned in such a manner as to insure that the charges are delivered to the addressee only. The correspondence should be forwarded via the commandant of the naval district in which the member resides.

(e) *Former members.* (1) If a certified copy of a judicial order or decree of paternity or support duly rendered by a United States or foreign court of competent jurisdiction against a former member of the Navy or Marine Corps is submitted, his or her last-known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed of the date of discharge and advised that the individual concerned is no longer a member of the Navy or Marine Corps in any capacity.

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(2) Where there has been no court adjudication, the correspondence will be returned to the complainant with an appropriate letter stating that the individual is no longer a member of the Navy or the Marine Corps in any capacity and giving the date of his or her discharge or final separation except that the last-known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a document which establishes that the former member has made an admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it. In cases where the complaint, along with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father in order to protect the physical health of either the prospective mother or the unborn child, the last-known address of the former member shall likewise be furnished to the claimant.

### PART 734—GARNISHMENT OF PAY OF NAVAL MILITARY AND CIVILIAN PERSONNEL FOR COLLECTION OF CHILD SUPPORT AND ALIMONY

Sec.

734.1 Purpose.

734.2 Scope.

734.3 Service of process.

734.4 Responsibilities.

734.5 Administrative procedures.

AUTHORITY: 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

SOURCE: 44 FR 42193, July 19, 1979, unless otherwise noted.

#### § 734.1 Purpose.

This part prescribes responsibilities and procedures applicable in the Department of the Navy when processing and honoring legal process brought for the enforcement of legal obligations to provide child support or make alimony payments under 42 U.S.C. 659 (Social

Security Act, section 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

#### § 734.2 Scope.

The provisions of this part shall apply to legal process affecting any Federal pay administered by the Department of the Navy and due and payable to all categories of naval military or civilian personnel including personnel of Navy or Marine Corps non-appropriated-fund activities. This part is not applicable to legal process affecting entitlements administered by other agencies, such as civilian employees' retirement benefits administered by the Office of Personnel Management or compensation administered by the Veterans Administration.

[44 FR 42193, July 19, 1979, as amended at 47 FR 28371, June 30, 1982]

#### § 734.3 Service of process.

(a) It is the policy of the Department of the Navy to respond promptly to legal process addressed to naval officials. Service of legal process affecting the pay of Department of the Navy personnel shall be made on the following designated officials in the manner and in the circumstances specified below:

(1) *Navy members.* Process affecting the military pay of active duty, Reserve, Fleet Reserve, or retired Navy members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199.

(2) *Marine Corps members.* Process affecting the military pay of active-duty, Reserve, Fleet Marine Corps Reserve, or retired Marine Corps members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Commanding Officer, Marine Corps Finance Center (AA), Kansas City, Missouri 64197.

(3) *Civilian Employees.* Process affecting the pay of active civilian employees of the Department of the Navy: